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5 **IN THE UNITED STATES DISTRICT COURT**  
6 **FOR THE DISTRICT OF ARIZONA**  
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8 In re Gorilla Companies, LLC,  
9 Debtor.

No. CV-09-1327-PHX-DGC

Re: Bankruptcy Proceedings

2:09-bk-02898-RJH

10  
11 Gorilla Companies, LLC, a Delaware  
limited liability company,

2:09-ap-00507-RJH

12 Plaintiff,

**ORDER**

13 v.

14 Sharon Van Tassel, and Darrell Van  
Tassel, husband and wife,

15 Defendants.  
16

17 **I. Background.**

18 Gorilla Companies LLC (“Gorilla”) is a debtor-in-possession currently under chapter  
19 11 bankruptcy. On May 8, 2009, Gorilla filed an adversary pleading in its pending  
20 bankruptcy case. The adversary complaint alleged that Sharon Van Tassel, a former  
21 employee, misappropriated funds from Gorilla’s wholly-owned subsidiary, Gorilla Quick  
22 Cash (“GQC”). *Gorilla Companies LLC v. Van Tassel*, Adv. No. 2:09-ap-00507-RJH.

23 On June 19, 2009, Van Tassel timely filed a motion with this Court to withdraw the  
24 reference from bankruptcy court on the ground that it was not related to the bankruptcy, and,  
25 upon withdrawal, to dismiss the action for lack of standing and lack of subject matter  
26 jurisdiction. Dkt. #2 at 2.

27 The motion has been fully briefed. Dkt. ## 2, 8, 9. For reasons that follow, the Court  
28 will deny the motion to withdraw the reference.

## 1    **II.    Discussion.**

2            The bankruptcy court “may hear and determine all cases under title 11 and all core  
3 proceedings arising under title 11, or arising in a case under title 11.” 28 U.S.C. §157(b)(1).  
4 A bankruptcy court may also hear “a proceeding that is not a core proceeding but that is  
5 otherwise related to a case under title 11.” *Id.* at § 157(c)(1). “[T]he district court may  
6 withdraw . . . any case or proceeding referred under this section, on its own motion or on  
7 timely motion of any party, for cause shown.” *Id.* at § 157(d).

8            To determine if cause for withdrawal exists, this Court “should consider the efficient  
9 use of judicial resources, delay and costs to the parties, uniformity of bankruptcy  
10 administration, the prevention of forum shopping, and other related factors.” *Sec. Farms v.*  
11 *Int’l Bhd. of Teamsters*, 124 F.3d 999, 1008 (9th Cir. 1997). The Court must “evaluate  
12 whether the claim is core or non-core, since it is upon this issue that [such] questions of  
13 efficiency and uniformity will turn.” *In re Orion Pictures Corp.*, 4 F.3d 1095, 1101 (2d Cir.  
14 1993).

### 15            **A.    Core v. Noncore Proceedings.**

16            Congress enacted the Bankruptcy Amendments and Federal Judgeship Act of 1984  
17 (“the Amendments”) to cure the constitutional defect of the Bankruptcy Act of 1978, which  
18 impermissibly shifted certain Article III powers to bankruptcy courts. *Sec. Farms v. Int’l*  
19 *Bhd. of Teamsters*, 124 F.3d 999, 1008 (9th Cir. 1997) (citing constitutional ruling in *N.*  
20 *Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982)). In the Amendments,  
21 Congress delineated the role of bankruptcy judges with respect to both core and noncore  
22 bankruptcy proceedings. 28 U.S.C. § 157. For core proceedings, the bankruptcy court may  
23 issue final orders, subject to the district court’s appellate review. *Id.* § 157(b)(1). For  
24 noncore proceedings, the bankruptcy court may issue findings of fact and law, but the district  
25 court must issue final orders, and all noncore matters which are appealed are subject to the  
26 district court’s de novo review. *Id.* § 157(c)(1).

27            The Amendments enumerate a non-exhaustive list of core proceedings. *Id.*  
28 § 157(b)(2)(A)-(O). In practice, however, “the core/noncore distinction has proven elusive.”

1 *In re Burger Boys, Inc.*, 183 B.R. 682, 685 (S.D.N.Y. 1994). Among its specific  
2 enumerations, 28 U.S.C. § 157(b)(2) contains what have been termed “catch-all” provisions,  
3 specifically, § 157(b)(2)(A) for “matters involving the administration of the estate,” and  
4 §157(b)(2)(O), for “other proceedings affecting the liquidation of the assets of the estate.”  
5 *In re Castlerock Properties*, 781 F.2d 159, 161-62 (9th Cir. 1986). These categories must  
6 be narrowly construed because, under a broad interpretation, “virtually any action by a debtor  
7 that would result in a recovery for the estate would be a core proceeding.” *Interconnect*  
8 *Telephone Servs., Inc. v. Farren*, 59 B.R. 397, 401(S.D.N.Y. 1994).

9 In general, “proceedings that do not invoke substantive rights created by bankruptcy  
10 law and that could exist outside of bankruptcy court are not core proceedings, although they  
11 may fall within the ‘otherwise related to’ jurisdiction of the court.” *In re ACI-HDT Supply*  
12 *Co.* 205 B.R. 231, 235 (B.A.P. 9th Cir. 1997) (citing *In re Eastport Assocs.*, 935 F.2d 1071,  
13 1076 (9th Cir. 1991)). “Related to” jurisdiction encompasses proceedings whose outcome  
14 could affect the bankruptcy estate in any conceivable way. *ACI-HDT* 205 B.R. 231 at 237  
15 (“An action is related to bankruptcy if the outcome could alter the debtor’s rights, liabilities,  
16 options, or freedom of action . . . and [if the outcome] in any way impacts upon the handling  
17 and administration of the bankruptcy estate.”) (citing *In re Fietz*, 852 F.2d 455, 457 (9th Cir.  
18 1988)) .

19 Van Tassel argues that Gorilla’s claims are not core because they do not arise under  
20 Title 11 and are not part of the administration of the bankruptcy estate. Dkt. #2 at 5.  
21 Gorilla’s complaint asserts that the Van Tassel adversary proceeding is core pursuant to 28  
22 U.S.C. §§ 157(b)(2)(A),(B),(C),(E),(H),(M),(N), and (O). Dkt. #1 at 4. The complaint fails,  
23 however, to tie its claims to the statutory language of any of these provisions. Other than a  
24 claim for attorney’s fees under the bankruptcy code, the complaint also contains only pre-  
25 petition, state law claims. Dkt. #1 at 10-18. Gorilla’s response to Van Tassel’s motion to  
26 withdraw argues that the adversary proceeding is “directly related to and will impact the  
27 administration of the estate.” This language corresponds to § 157(b)(2)(A) and its coverage  
28 of “matters concerning the administration of the estate.” Gorilla’s reliance on this “catch

1 all” provision, however, necessitates further evaluation of the claims’ relationship to the  
2 bankruptcy. *In re Castlerock Props.*, 781 F.2d at 162.

3 Courts generally have found pre-petition state law claims against parties who have not  
4 filed claims in the bankruptcy case to be noncore proceedings, even when the outcome of  
5 proceedings may impact the assets of the debtor estate, unless there is a nexus between the  
6 claims and the bankruptcy. *See, e.g., id.* (holding that state law contract claims that did not  
7 fit into the other enumerated proceedings are noncore, related proceedings even if they fit the  
8 literal wording of the catch-all phrases); *Orion*, 4 F.3d at 1102 (holding that “breach-of-  
9 contract action by a debtor against a party to a pre-petition contract, who has filed no claim  
10 with the bankruptcy court, is non-core”); *In re Sun Healthcare Group* 267 B.R. 673, 677  
11 (B.R. D. Del. 2000) (holding that a claim against a former employee for violating a non-  
12 compete clause “is non-core because of a weak nexus between the bankruptcy . . . and the  
13 adversary proceeding”); *Burger Boys*, 183 B.R. at 686 (holding debtor-tenant claims against  
14 landlord noncore because, unlike insurance claims specifically meant to indemnify a debtor,  
15 no like nexus exists between debtor’s adversary claims and the reorganization plan).

16 Van Tassel’s arguments are persuasive. Gorilla fails to establish that the claims  
17 implicate bankruptcy law or to establish a nexus between the pre-petition, state law claims  
18 and the bankruptcy. Gorilla asserts, without specific enumeration, that GQC’s financial  
19 affairs are referenced in its 43-page, May 2009 operating report. Dkt. #8 at 4, Ex. 1. It is not  
20 clear how this fact establishes core jurisdiction over the Van Tassel adversary proceeding.  
21 Gorilla’s assertion that the claims against Van Tassel could result in a recovery for the estate  
22 (Dkt. #8 at 9) is also not enough to establish core bankruptcy jurisdiction.

23 The Court finds, however, that Gorilla’s claims do satisfy the test for “related to”  
24 jurisdiction. Gorilla alleges that Van Tassel misappropriated at least \$192,025.90 from its  
25 subsidiary, GQC. Dkt. #8 ¶ 13. As pled, the Court finds that the outcome of Gorilla’s claim  
26 could conceivably “alter the debtor’s rights, liabilities, options, or freedom of action” with  
27 regard to the handling of the bankruptcy estate. *ACI-HDT*, 205 B.R. at 237.

28 Van Tassel asserts that Gorilla’s reorganization plan is not dependant on the outcome

1 of this adversary proceeding because the plan preserves all claims that arise before the  
2 effective date of reorganization. Dkt. #9 at 6. But such preservation of potential post-  
3 bankruptcy adjudication does not preclude resolution of the claims within the bankruptcy  
4 proceeding; nor is it essential that the reorganization plan depend on the outcome of these  
5 claims, so long as the outcome could impact the administration of the bankruptcy in any way.  
6 Even if not specifically included in its reorganization plan, the outcome of this claim could  
7 impact Gorilla's options with regard to any other outstanding bankruptcy claims.  
8 13 Holdings, LLC, the original holding company for Gorilla, has filed an action in Gorilla's  
9 bankruptcy which, if successful, already lays claim to the specific money in question.  
10 Dkt. #8 at 11. The test for "related to" jurisdiction, which requires only a conceivable  
11 connection to the debtor's handling of the estate, is thus met.

12 **B. Parent Corporation Status.**

13 Van Tassel makes an additional argument, not specifically limited to the core/noncore  
14 distinction, that Gorilla's complaint should be withdrawn from bankruptcy court because it  
15 involves claims which Gorilla made not on its own behalf, but on behalf of its non-debtor  
16 subsidiary, GQC. Dkt. #2 at 5. Van Tassel cites *In re Fitzgeralds Gaming Corp.* 261 B.R.  
17 1, 3 (W.D. Mo. 2001), for the proposition that "the mere fact that [a] parent corporation filed  
18 a bankruptcy petition does not ratchet [a subsidiary's] state law proceeding into a bankruptcy  
19 proceeding." Dkt. #2 at 5. Van Tassel's reliance on *Fitzgeralds* is misplaced.

20 In *Fitzgeralds*, the defendant company, a non-debtor, moved to have state law claims  
21 against it removed from state court to district court and then transferred to bankruptcy court  
22 on the ground that the opposing party was the subsidiary of a company currently in  
23 bankruptcy proceedings. 261 B.R. at 3-4. *Fitzgeralds* held that the case was not a core  
24 bankruptcy proceeding, nor was there "a sufficient nexus between [the] lawsuit and the  
25 bankruptcy estate" to confer jurisdiction. *Id.* at 5, 7. Specifically, the debtor was not party  
26 to the action and could not take action "to affect the outcome," nor would the outcome of the  
27 litigation impact the debtor's "rights, liabilities, or course of action" in any way. *Id.* at 6.

28 In this case it is the debtor company, Gorilla, which brings the adversary proceeding

1 against Van Tassel. Unlike the parent company in *Fitzgeralds*, which was never party to the  
2 litigation, Gorilla is not only party to the current cause of action, but Gorilla originated the  
3 cause of action. Whether Gorilla had standing to do so for claims related to the alleged  
4 mismanagement of its subsidiary company is an issue for the adjudicating court to decide,  
5 but the fact that Gorilla's claims involve a subsidiary does not, of itself, render the claims  
6 unrelated to the bankruptcy.

7 Also, unlike *Fitzgeralds*, in which the movant sought removal of a state court case  
8 into district court and then a transfer to bankruptcy court, Gorilla's adversary pleading is  
9 already in bankruptcy court. The party seeking withdrawal has the burden of showing that  
10 the adversary pleading is neither a core bankruptcy proceeding nor sufficiently related to the  
11 bankruptcy to warrant continued jurisdiction. *In re Homeland Stores, Inc.*, 204 B.R. 427,  
12 430 (D. Del. 1997). In this case, the Court is not persuaded that the outcome of Gorilla's  
13 adversary proceeding will have no impact on Gorilla's rights, options, or freedom of action  
14 in administering the bankruptcy estate.

### 15 **C. Questions of Equity and Efficiency.**

16 Having determined that Gorilla's claims properly fall under 28 U.S.C. § 157(c)(1)'s  
17 "related to" jurisdiction, this Court must now consider whether discretionary withdrawal  
18 under 28 U.S.C. § 157(d) is appropriate.

#### 19 **1. Efficient Use of Judicial Resources.**

20 Van Tassel argues that she intends to seek a jury trial and constitutional considerations  
21 prevent the bankruptcy court from conducting a jury trial on a noncore matter. Dkt. #2 at 6.  
22 (citing *In re Cinemetronics, Inc.*, 916 F.2d 1444, 1451 (9th Cir. 1990)) ("grave Seventh  
23 Amendment problems would arise if a jury trial is conducted by the bankruptcy court [on a  
24 noncore matter], because section 157(c)(1) requires de novo review by the district court of  
25 noncore matters.").

26 The potential for this proceeding to require a jury trial, necessitating future  
27 withdrawal, is one factor to consider when evaluating the efficient use of judicial resources.  
28 *Sec. Farms*, 124 F.3d at 1009. This Court may also consider that judicial efficiency is best

1 served by allowing necessary pretrial issues, some of which may obviate the need for a jury  
2 trial altogether, to proceed in bankruptcy court. *Orion*, 4 F.3d 1095, 1101-02 (2d. Cir. 1993).  
3 *See also In re Healthcentral.com*, 504 F.3d 775, 778 (9th Cir. 2007) (“A valid right to a  
4 Seventh Amendment jury trial in the district court does not mean . . . that the action must be  
5 transferred to the district court. Instead, we hold, the bankruptcy court may retain  
6 jurisdiction over the action for pre-trial matters.”).

7 Here, the judicial resources needed to adjudicate pre-trial matters will likely be the  
8 same in either forum, with the possibility of greater efficiency in the bankruptcy court where  
9 Gorilla is already a party. Van Tassel’s assertion that judicial inefficiency will result from  
10 leaving this proceeding in bankruptcy court – when future withdrawal may become  
11 appropriate – is merely speculative, and the Court finds insufficient cause at this time for  
12 withdrawal of the reference on those grounds.

## 13 **2. Delay and Cost to the Parties.**

14 On the present record, there is no evidence of substantial delay or cost to the parties  
15 from this action remaining in bankruptcy court.

## 16 **3. Uniformity of Bankruptcy Administration.**

17 Van Tassel argues that withdrawal of the reference will not impair the administration  
18 of the bankruptcy estate. Dkt. #2 at 7. The Court finds unconvincing Gorilla’s counter-  
19 argument that withdrawing the reference would necessarily “undermine the bankruptcy  
20 court’s administration.” Dkt. #8 at 10. Unlike *In re Canter*, 299 F.3d, 1150, 1154 (9th Cir.  
21 2002), which Gorilla relies upon for this proposition (Dkt. #8 at 10), the bankruptcy court has  
22 made no ruling in the present cause of action. Neither is it likely, as Gorilla contends, that  
23 withdrawing the reference will lead to inconsistent rulings with its other adversary  
24 proceeding, a counter-claim against 13 LLC (Dkt #8 at 11, Ex. E) (referencing 2:09-ap-  
25 00266-RHJ), because, while 13 LLC purportedly laid claim to the funds in question *after*  
26 Van Tassel allegedly misappropriated them, 13 LLC merely contends that it has a right to  
27 these funds to compensate for Gorilla’s indebtedness to it (Dkt. #8, Ex. E), a matter which  
28 the bankruptcy court must decide on separate evidentiary grounds from whether Van Tassel

misappropriated the funds in the first place.

Establishing that a case could be tried in district court without undermining bankruptcy proceedings, however, is not the same as showing cause why the proceeding should be withdrawn. Other than offering the general argument that adversary proceedings are time consuming, Van Tassel offers no evidence to show that the bankruptcy court would be a less efficient forum than the district court to adjudicate Gorilla's claims. Dkt. #2 at 6-7. Additionally, while it may be that the 13 LLC and Van Tassel adversary proceedings are substantively distinct, any potential crossover of evidence between them, which would lend to the bankruptcy court's familiarity with the case at hand, also weighs against withdrawal.

#### **4. Forum Shopping**

Both parties make accusations of forum shopping. Dkts. #2 at 7; #8 at 11; #9 at 10. Van Tassel makes the unsubstantiated claim that alleged unfavorable rulings against Gorilla in its state court suit against Robb Corwin of 13 LLC prompted Gorilla to file for bankruptcy in the first place, and subsequently to bring the instant case into bankruptcy court. Dkt. #2 at 7. Van Tassel argues that Gorilla did this to sweep its subsidiary's claims inappropriately into bankruptcy court. Dkt. #9 at 8. This argument relates not to the appropriateness of the forum, but to Gorilla's standing to bring a claim related to GQC, which, as stated earlier, can be determined in either court. Importantly, neither Gorilla nor Van Tassel offer any evidence as to how the opposing party would gain an unfair advantage from either forum.

Procedurally, leaving the action in bankruptcy court would conceivably present less cost to Gorilla, the pleading party, as withdrawing the reference at this stage would require concurrent representation in two separate forums. Whether or not this is Gorilla's motivation, Van Tassel, as the defending party, faces no corresponding disadvantage from the action remaining in bankruptcy court. The Court thus finds no evidence of forum shopping sufficient to merit withdrawal of the reference on those grounds.

### **III. Conclusion.**

The Van Tassel adversary proceeding consists of noncore bankruptcy claims, but falls under the bankruptcy court's jurisdiction as "a proceeding that is otherwise related to a case

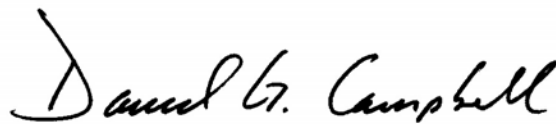


1 under title 11.” 28 USC § 157(c)(1). This court has discretion to order withdrawal of any  
2 cases referred to bankruptcy court under this section “for cause shown.” *Id.* at § 157(d).  
3 Because this Court has de novo review over any appeals related to noncore proceedings,  
4 constitutional concerns may necessitate future withdrawal in the event that this action  
5 proceeds to a jury trial. At the present stage, however, this Court finds insufficient grounds  
6 for withdrawal and orders that this action remain in bankruptcy court for adjudication of  
7 pretrial matters.

8 Having reached the conclusion that this action does not necessitate immediate  
9 withdrawal from bankruptcy court, this Court need not address Van Tassel’s motion to  
10 dismiss the action on the grounds of lack of standing and lack of subject matter jurisdiction.

11 **IT IS ORDERED** that the motion to withdraw the reference from bankruptcy court  
12 filed by Defendants Sharon Van Tassel and Darrel Van Tassel (Dkt. #2) is **denied**.

13 DATED this 2nd day of October, 2009.

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David G. Campbell  
United States District Judge  
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